

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

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No. 75-4211

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NORMAN and ARLENE RODMAN, et al.,
Petitioners-Appellants-Cross-
Appellees

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee-Cross-
Appellant

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NORMAN and ARLENE RODMAN,
Petitioners-Appellants-Cross-Appellees
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee-Cross-Appellant

MARTIN and PHYLLIS RODMAN,
Petitioners-Appellants-Cross-Appellees
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee-Cross-Appellant

ESTATE OF ROBERT RODMAN, Deceased, GERTRUDE RODMAN, Administratrix,
and GERTRUDE RODMAN,
Petitioners-Appellants-Cross-Appellees
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee-Cross-Appellant

ESTATE OF SYDNEY NEWMAN, Deceased, DOROTHY NEWMAN, Executrix,
and DOROTHY NEWMAN, Surviving Spouse,
Petitioners-Appellants-Cross-Appellees
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee-Cross-Appellant

ESTATE OF SYDNEY NEWMAN, Deceased, DOROTHY CLIFFORD NEWMAN,
Executrix, and DOROTHY CLIFFORD NEWMAN, Surviving wife,
Petitioners-Appellants-Cross-Appellees
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee-Cross-Appellant

ON APPEALS FROM DECISIONS OF THE UNITED STATES TAX COURT

SUPPLEMENTAL PORTIONS OF THE RECORD ON APPEAL

SCOTT P. CRAMPTON,
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1 deducted. There is no allocation by the respondent
2 either for part of the expenditures or for all or for
3 the value of the pump.

4 THE COURT: I am talking about the proxy expendi-
5 tures.

6 MR. SHURMAN: The proxy expenditures were never
7 claimed as deductions.

8 THE COURT: If they were never claimed as deduct-
9 ions, that is another matter.

10 MR. SHURMAN: One of the other principal issues
11 is to hold petitioners' spouses liable for the acts
12 if this Court should find that there is an omission
13 of income of more than twenty-five percent in either
14 or both of the years in 1957 and 1960.

15 THE COURT: The Court would suggest an amended
16 petition, an amendment to the petition be filed on
17 behalf of the spouses.

18 MR. SHURMAN: The parties have stipulated that
19 the wives are not liable for the fraud penalties.

20 THE COURT: I see.

21 MR. SHURMAN: The parties have not stipulated,
22 at least the Government will not stipulate that the
23 wives are not liable for the tax.

24 THE COURT: I don't know how they could be,
25 counsel.

1 MR. SHURMAN: Well, if in 1960, if this Court
2 should hold that there was a forgiveness of an indebted-
3 ness in 1960, what benefit could the wives have received
4 in 1960 by a mere technical concept of income to the
5 petitioners? There are other small items which I don't
6 want to burden the Court with any further.

7 THE COURT: All right.

8 MR. SHURMAN: Thank you very much, your Honor.

9 THE COURT: Let's hear what the respondent has to
10 say.

11 MR. BERNER: Would you like me to proceed now,
12 your Honor, or do you want to call this other case?

13 THE COURT: Proceed.

14 MR. BERNER: With the Court's indulgence, I would
15 like to cover all of the issues in these cases to clearly
16 present the positions of the parties.

17 THE COURT: All right.

18 MR. BERNER: In order to avoid going over each
19 individual petitioner and the deficiencies asserted for
20 those years, I have made a summary of the petitioners,
21 the years, docket numbers and deficiencies; and if it
22 will assist the Court, I would like to submit a copy at
23 this time.

24 THE COURT: All right. Thank you.

25 MR. BERNER: These cases involve deficiencies in

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1 paragraph which I think that the Court should have.
2 May I add it now.

3 THE COURT: You may add it now.

4 MR. SHURMAN: One of the two surviving joint
5 venturers, Norman Rodman, will not be present in Court.
6 He is suffering from a serious medical condition and
7 upon the advice of his physician must absent himself
8 from all business activities.

9 Said petitioner now resides in Switzerland, where
10 his physician believes he can obtain the best of the
11 medical attention that is required. This petitioner's
12 only means of support comes from payments he receives
13 from insurance companies pursuant to policies covering
14 disability. Thank you very much, your Honor.

15 MR. BERNER: Your Honor, I would like to introduce
16 an original and one copy of the stipulation of facts
17 with exhibits, Joint Exhibits 1A thru 24X.

18 THE COURT: It will be received and made a part
19 of the record.

20 (The stipulation of facts and the
21 documents previously marked for
22 identification as Joint Exhibits
23 Nos. 1A thru 24X were received
24 in evidence.)

25 MR. BERNER: I would also like to introduce an

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1 THE COURT: Now, we have here for identification
2 a letter from this witness transmitting this letter to
3 Mr. Goodman. We have the original of the letter marked
4 Exhibit 34, I believe, for the purpose of proving that
5 such a letter was received from the effects of Mr.
6 Newman and was transmitted to Mr. Goodman. Without
7 basing it upon the authenticity thereof, it will be
8 admitted in evidence.

9 MR. GOLDSTEIN: Not necessarily for the truth of
10 the statements contained therein.

11 THE COURT: We're not passing upon the authenticity
12 of the statements contained therein. Let's get it
13 marked for the same basis.

14 MR. BERNER: I will object to the note.

15 THE COURT: I will overrule your objection for
16 the limited purpose for which I am admitting it at this
17 time.

18 MR. BERNER: I would like to state for the record
19 that as far as the note itself is concerned, if the
20 purpose for which it is being admitted is the truth of
21 the contents stated therein, I would object on the
22 grounds of hearsay.

23 THE COURT: Nobody is saying whether it is true
24 or false or whether it is a forgery. This is a note
25 that was found in the decedent's possession and was

1 transmitted to Mr. Goodman. We have got to start some-
2 where if we are going to authenticate the note. Do you
3 want to get the note, too, and we will mark it and put
4 it in.

5 MR. SHURMAN: I now offer into evidence a letter,
6 Petitioner's Exhibit No. 33 for identification, which
7 is a letter dated April 2, 1964.

8 THE COURT: That will be received for the limited
9 purpose stated by the Court. Exhibit 34 likewise.

10 MR. SHURMAN: Your Honor, I would like to bring
11 out in this letter there is attached the envelope from
12 Rodwin & Rodwin to Mr. Nathan Goodman.

13 THE COURT: The entire exhibit is received for
14 the purpose stated by the Court.

15 MR. SHURMAN: I also offer into evidence the
16 original of the letter of January 7, 1957 signed by
17 Mr. Aurele Brisson to Mr. Robert Rodman.

18 THE COURT: That letter will be received as a
19 document found by this witness in the effects of Mr.
20 Newman without necessarily implying that the signature
21 appearing thereon is or is not Mr. Brisson's or that the
22 letter is or is not genuine.

23 THE CLERK: Petitioner's Exhibits 33 and 34 are
24 admitted.

25 (The document previously marked

1 THE COURT: The for identification as Petitioner's
2 Exhibit No. 33 was received into
3 evidence.)

4 (The document previously marked
5 for identification as Petitioner's
6 Exhibit No. 34 was received into
7 evidence.)

8 THE CLERK: Petitioner's Exhibits 35, 36 and 37
9 for identification.

10 (The document referred to was
11 marked for identification as
12 Petitioner's Exhibit No. 35.)

13 (The document referred to was
14 marked for identification as
15 Petitioner's Exhibit No. 36.)

16 (The document referred to was
17 marked for identification as
18 Petitioner's Exhibit No. 37.)

19 MR. BERNER: Do you have the original of the note?

20 THE COURT: Let's put the note in also.

21 THE CLERK: Petitioner's Exhibit No. 38 for
22 identification.

23 (The document referred to was
24 marked for identification as
25 Petitioner's Exhibit No. 38.)

1 THE COURT: The note previously referred to is
2 marked Exhibit 38 for identification and will be
3 received with the qualifications.

4 (The document previously marked
5 for identification as Petitioner's
6 Exhibit No. 38 was received into
7 evidence.)

8 MR. BERNER: I would also, your Honor, like to
9 have it stated for the record it's not been established
10 that this is in fact the note.

11 THE COURT: That is correct. This is just the
12 document that was found in Mr. Newman's files and
13 transmitted.

14 BY MR. SHURMAN:

15 Q. Mr. Rodwin, I show you Petitioner's Exhibit No.
16 35 marked for identification, which is a letter dated
17 October 23, 1963 addressed to your firm. Will you please
18 explain to the Court this letter?

19 A. (Examining) Well --

20 MR. BERNER: I object to that, your Honor.

21 THE COURT: Are you asking him to identify it?

22 MR. BERNER: Are you asking him to testify to the
23 contents?

24 MR. SHURMAN: I offered this letter for identi-
25 fication. This is a letter to Mr. Richard Rodwin in

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2 MR. BERNER: If the Court pleases,
3 last Tuesday Mr. Shurman mentioned in his
4 opening statement that Norman Rodman was
5 unavailable for trial, due to medical illness,
6 in Switzerland.

7 The respondent intends to draw negative
8 inferences from his absence for trial.

9 MR. SHURMAN: At the moment, I have a
10 letter dated April 11, 1972 from a doctor who
11 had treated Norman Rodman over a period of
12 years.

13 In the meanwhile, I have been in touch
14 with Mr. Norman Rodman, through his brother.
15 I just learned this morning that Mr. Norman
16 Rodman will obtain a letter from the doctor
17 who is treating him in Switzerland.

18 In the meanwhile, I ask this Court to
19 look at this letter of April 11, '72.

20 THE COURT: I don't know. Unless he
21 has a terminal illness --

22 MR. SHURMAN: If Your Honor pleases,
23 I did bring in this morning the Merck Manual,
24 which may give you some idea as to the
25 seriousness of this particular ailment.

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2 THE COURT: The Court is not going to
3 attempt to take a role as an expert witness
4 in an attempt to determine the condition of
5 the petitioner.

6 Petitioner's counsel has offered a
7 letter written last April by doctors here in
8 New York, who I assume have not seen the
9 petitioner since that time.

10 MR. SHURMAN: That is correct.

11 THE COURT: As to what petitioner's
12 condition might be at this time, I don't
13 believe that is admissible at this time. The
14 doctor who signed the letter here should
15 elaborate.

16 MR. SHURMAN: May I ask the Court to
17 keep the record open until I obtain a letter
18 coming from Mr. Norman Rodman, from the
19 doctor treating him since he has been living
20 in Switzerland.

21 THE COURT: Such a letter would not be
22 admitted without consent of the respondent.
23 It is still hearsay.

24 The other question the Court has is:
25 When did Mr. Norman Rodman go to Switzerland?

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2 MR. SHURMAN: Mr. Norman Rodman went
3 to Switzerland, I would say, about two years
4 ago, at the recommendation of these doctors
5 here in New York, and the doctor who is treat-
6 ing him in Switzerland, in their belief that
7 he could be better treated for his condition
8 by this famous doctor in Switzerland,
9 Dr. Mach.

10 MR. BERNER: Respondent understands
11 that Mr. Norman Rodman was here last spring,
12 Your Honor.

13 THE COURT: I don't know. At this time,
14 the Court isn't prepared to say that any
15 inference should be drawn concerning Mr.
16 Norman Rodman, in Mr. Norman Rodman's absence.

17 There are a great many cases tried
18 before this Court where the petitioner
19 doesn't testify. There is no particular
20 reason why he should testify.

21 Whether or not his failure to testify
22 is the basis for making an inference, the
23 Court isn't prepared to say at this time.

24 I suggest to counsel for the petition-
25 er that medical testimony will have to be

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2 given in Court. That is why I have asked for
3 the letter.

4 MR. SHURMAN: Would Your Honor consider --

5 THE COURT: It is a question of whether
6 the respondent would stipulate that testimony
7 could be given. There is no basis on which
8 an unsworn letter could be admitted into
9 evidence.

10 The only thing the Court can consider
11 is what is in the record.

12 MR. SHURMAN: If I can put the letter
13 in the record --

14 THE COURT: The Court will consider any-
15 thing that is in the record, but before you
16 can put such a letter into the record, you
17 have to get some agreement from counsel for
18 the respondent.

19 Because of the remoteness of time, the
20 Court might say that that letter is somewhat
21 meaningless, anyway.

22 MR. SHURMAN: May I ask the Court to
23 keep this record open?

24 THE COURT: I will be trying this case
25 for the next several days; won't we?

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2 MR. SHURMAN: It took almost a week to
3 get the letter that was received yesterday;
4 rather, Saturday.

5 THE COURT: The Court can't keep this
6 record open. These happen to be cases float-
7 ing around since 1965.

8 MR. SHURMAN: Yes.

9 THE COURT: And we are going to finish
10 them this week. The Court made that very clear
11 at the outset.

12 MR. BERNER: Respondent has one further
13 point.

14 Last Tuesday two exhibits, numbers 35 and
15 36, were offered by petitioners. Those were
16 letters from attorneys submitting claims
17 against the Estate of Sydney Newman.

18 I did contact the attorneys who wrote
19 those letters. With respect to Exhibit No. 35,
20 a letter from a Pittsburgh firm, signed by
21 Mr. John Hanna, I contacted Mr. Hanna. He
22 stated that the underlying liability for which
23 he made his claim was a total of obligations
24 of both a stockholders' protective committee
25 of the Rodorn Manufacturing Company and the

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Orenstein-Cross

a basis for objecting. Should respondent depart from that line of testimony, then you can take it from there.

Q Mr. Orenstein, did you have either an attorney or an accountant representing you in these negotiations?

A In this time I believe it was Mr. Silverman, the lawyer from the corporation. He is dead.

Q Did you have an accountant represent you?

A The company accountant, if I recall, was Mr. Elliot.

Q You stated that the attorney and accountant represented the company.

Did they also represent you?

A Yes.

Q They represented both partners?

A Yes.

Q Do you know how they arrived at the amount of money and stock you were to receive?

A I don't know.

Q You have no idea?

A No.

MR. BERNER: Respondent has no

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2 Q You never participated in the purchase
3 or sale?

4 A No.

5 Q When you were working with Telex opera-
6 tion in the Windsor Hotel did you just merely transmit
7 information, or did you actually exercise any judgment?

8 A I transmitted information both ways. If there
9 was a difficulty in getting a direct setup to New York,
10 as I understood it, so I relayed the information from
11 Calgary to New York, got instructions from New York,
12 and sent it back to Calgary.

13 Q Did you ever exercise your own judgment
14 on any of those transactions?

15 A I don't think so. I think it was always at
16 the behest of New York.

17 Q Did you ever participate in the nego-
18 tiations with three Canadians by the names of Rene
19 Monjeau, Etienne Cresier, and Roger Robert?

20 A I am sorry.

21 Q Did you participate in negotiations with
22 these three individuals?

23 A No. I met the gentlemen in Montreal, but I
24 did no negotiating with them at all.

25 Q Prior to November, 1956, you never

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Elliot - direct

any work on the 1956 income tax assembly of information for the joint venture until after our tax season.

We found the records for the joint venture too sloppy to use freely and readily.

We got extensions and we started collecting the evidence for correcting and modifying the records so that we could come to a sensible account. In late April or early May of 1957 we started to assemble data.

That was when this agreement or this document with the signatures on it was given back to us along with a photostat of a note. I specifically sent them a memorandum saying that before we can record a transaction we want to see documentation.

Before they went up to negotiate with Mr. Brisson -- and I don't know what happened there -- I said to be sure to bring back sufficient evidence for our files and whatever transactions you engage in.

Preferably something else negotiated with an attorney there, but whatever you do, bring back a copy of any obligations or notes issued and a copy of any agreements entered into.

This they gave us in approximately May of 1967.

MR. SHURMAN: I would now like to offer

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Elliot - direct

these agreements into evidence.

MR. BERNER: For what purpose is the offer made?

MR. SHURMAN: The purpose of the offer is that the witness has testified that he prepared the agreements.

These agreements were executed, were delivered to him. I'm not questioning the exact date of their delivery, but that they were in fact executed.

MR. SHURMAN: I would object, your Honor, because I don't believe that it has been shown that these agreements were in fact entered into.

THE COURT: Objection overruled.

(Petitioner's Exhibits 42 and 43 marked for Identification were received in Evidence as of this date.)

Q Mr. Elliot, after you received the agreement or the letter of agreement of November 3, 1956, and, as you testified, you also received a copy of the note executed on November 15, 1956 --

MR. BERNER: Your Honor, I object.

Counsel is assuming facts not in evidence.

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Elliot - direct

THE COURT: He's just repeating what the witness testified to. I would say he is describing what the documents purport to be.

He is not testifying that it was anything. It was a copy of a note. Basically, isn't the respondent's position that whatever Mr. Brisson signed, that it was just a fake?

So that the fact that documents exist -- I don't know any requirement that challenges that.

Do you?

This witness has testified that he received a copy of Exhibit 43 which had been drafted by him and just signed instead of being retyped or anything like that, along with a copy of a note -- photostatic copy of a note, in May or Spring or 1957. It could have been a forgery. It could have been a fake. It could have been merely created for the purpose of reducing the profits on the sale of the stock, but, it was received by this petitioner.

It was on that basis that he prepared the returns.

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1 Elliot - direct

2 MR. BERNER: It was my understanding,
3 your Honor, that these exhibits were intro-
4 duced to show that these agreements were in
5 fact entered into.

6 THE COURT: I don't know that they
7 show that yet.

8 MR. BERNER: Your Honor, we don't ob-
9 ject to the existence of the papers themselves.

10 We object to --

11 THE COURT: Does the respondent ob-
12 ject to the witness testifying that the docu-
13 ments were executed?

14 I think the respondent must concede,
15 unless you challenge the veracity of this
16 witness, that these documents were prepared
17 and signed sometime prior to May, 1957 or the
18 Spring of 1957; isn't that right?

19 Whether they were genuine or forgeries,
20 whatever was done was done prior to that time.

21 MR. BERNER: No, your Honor. We don't
22 accept that.

23 THE COURT: Well, I accept this witness'
24 testimony to that effect. It is certainly ad-
25 missable to prove that. Proceed.

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Elliot - direct

you can exclude it per se.

MR. BERNER: On these two documents, your Honor, respondent does not object to their admissibility solely to show that they were documents received by Mr. Elliot.

But, respondent does object to their admissibility to show the truth of the statements contained in them.

Mr. Elliot has not shown --

THE COURT: Well, they do not necessarily prove that the statements contained therein -- this purports to be an agreement and it is signed by the individuals whose names appear thereon. I don't know that there is any basis for questioning that.

As the Court understands the respondent, the respondent's position is that these people would have signed anything.

That doesn't prove anything; is that right?

MR. BERNER: I'm not even certain that the signatures are those of the people that they purport to be.

THE COURT: Well, if the respondent has

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Elliot - direct

a subpoena.

THE COURT: I realize that.

MR. GOLDSTEIN: They have refused to come into the court.

THE COURT: People don't do that for nothing.

MR. GOLDSTEIN: They have refused to come to this court and the petitioner has been introducing documents which nobody who was here present is a party to so that they can be cross-examined.

I don't doubt that Mr. Elliot prepared a return from these documents. But, I don't think he knows about the authenticity of them.

THE COURT: I don't think he does either. They could have had a different deal under the table. He doesn't know.

Doesn't it really get down to where the petitioner has the burden of proof here or the petitioner has to lose; or the respondent has the burden of proof or the respondent has to lose.

Because, there isn't anything in the

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2 MR. SHURMAN: If Your Honor please,
3 I would like to offer at this time a copy of a
4 letter that I received from the physician
5 who is attending Norman Rodman.

6 This is from Switzerland. It is in
7 French. I will have it translated within
8 twenty-four hours, and I will file a copy
9 of it.

10 THE COURT: The Court will be glad to
11 receive it, Mr. Shurman. But I don't feel
12 that his physical condition is a matter which
13 is of any concern to the Court.

14 His failure to appear, as far as I am
15 concerned, does not raise any inference
16 whatsoever.

17 Where you have a burden of proof, his
18 failure to appear is not compensated for by
19 the letter; where the government has the
20 burden of proof, his failure to appear has
21 not been compensated for any more than an
22 earlier case where a petitioner elected not
23 to appear, and it had to go by default.

24 MR. SHURMAN: If it is impossible for
25 petitioners to meet the burden due to --

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2 petitioner to prove something does not
3 warrant the Court in finding the opposite
4 where the respondent has the burden.

5 MR. GOLDSTEIN: We agree with that,
6 Your Honor, of course.

7 THE COURT: That is why the Court
8 remarked at the conclusion yesterday that
9 it appears as if we are in a situation where
10 in the absence of further evidence, neither
11 party can meet their burden.

12 MR. SHURMAN: I would also like, first
13 of all, to mark this for identification, and
14 then ask the Court to consider it.

15 THE CLERK: Petitioner's Exhibits 47
16 and 48 for Identification.

17 (Clipping and letter marked Petitioner's
18 Exhibits 47 and 48, respectively, as of
19 this date.)

20 MR. SHURMAN: If the Court please, I
21 have a copy of a letter dated December 14,
22 1953, signed by Mr. Brisson and to Mr. Newman.
23 The last page, I believe, is very material to
24 the petitioner's case, and I ask the Court
25 to read the document.

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But when the debtor pays the debt, I think the inescapable inference is that it was a valid debt. But when you have the opposite, then it is a very difficult problem to substantiate that it was ever intended that it would be paid.

That is the real question, isn't it, Mr. Goldstein?

MR. GOLDBSTEIN: That is the basic question, your Honor. It is set in the statutory notice, and you have rephrased it basically.

It is the same question.

Of course, as your Honor is aware from the proffer that we made earlier, respondent predicated his fraud on the statement of the person who allegedly received it that there was a conspiracy.

Thus far we have been unable to get that evidence into the record.

THE COURT: I don't believe in letting stuff in for what it is worth or looking at it later.

The responsibility is to rule out what

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Q Will you please explain to the Court to what extent your work familiarized you with the finances of those companies?

A We had access to and dealt with the work of the Canadian accountants as well as the controller of Torbrook Iron and Ore Mines, Ltd. and in pursuance of that we had prepared financial summaries of the position of Torbrook Iron and Ore Mines, Ltd. approximately at the end of 1956. At that time we had determined that there was approximately \$1,024,000 of capital funds paid into the treasury.

MR. BERNIER: I object, your Honor.

This witness has not been asked any questions pertaining to this.

THE COURT: Objection sustained.

Q Mr. Elliot, I direct you to page five of respondent's answer in docket number 3739-67.

That is the estate of Sidney Newman, deceased, Dorothy Newman, Executrix and Dorothy Newman, surviving spouse.

MR. SHURMAN: May I also inform the Court that similar answers were filed in connection with the other petitioners.

Q Mr. Elliot, I direct you to page five

of respondent's answer wherein respondent sets forth the sum of \$1,094,702.34 as funds paid into the treasury. I ask you, do you know as a fact whether such a sum was actually paid into the Torbrook treasury?

A Well, I didn't handle the remittances themselves, but the summaries furnished to me and the accountants working in Canada did reflect a similar sum.

MR. GOLDSTEIN: Your Honor, may the record show that the respondent indeed pleaded that the item is --

THE COURT: I think the record already showed that.

MR. GOLDSTEIN: I don't think the petitioner admitted that. He did not agree it was a fact that the total was mentioned there.

THE COURT: What are we leading up to, Mr. Shuman?

Q Mr. Elliot, if you know, will you please tell the Court what happened to this \$1,094,702.34?

MR. BERNER: I object, your Honor.

He has not established that --

THE COURT: Objection sustained.

MR. SHURMAN: If the court please,
I proceeded in these questions to establish
that Mr. Elliot has financial interest.

THE COURT: He had a financial interest,
but, he testified, he did not have custody
over the remittances and did not handle any
of the funds.

And you just asked him whether he knew.
He may have read something in the paper or
something. But of his own knowledge --

MR. SHURMAN: I would presume as an
accountant --

THE COURT: Let us ask him.

Of your own knowledge, Mr. Elliot, do
you know what happened to that money?

Yes or no.

THE WITNESS: I can't answer it yes or
no, your Honor.

THE COURT: Well, of your own knowledge.

THE WITNESS: Some of it I know of my
own knowledge, some I don't.

THE COURT: As to what you know of your
own knowledge, how did you come by that know-

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Q Were you ever in Canada with members of the joint venture?

A No. I went up on my own to see some attorneys up there, Salter, Reilly & Jameson, in Toronto.

MR. BERNER: May I have Exhibit 44 and 45.

Q Mr. Elliot, yesterday, you identified Petitioners Exhibit 44.

A I identified it as a document I had dealt with or I had seen.

Q That's correct. Were you present at the execution of this document?

A No, I was not.

Q Then you did not actually see this document executed?

A No.

Q I show you Petitioners' Exhibit 45.

You also testified yesterday that this was a document that you saw.

A That's correct.

Q Did you see this document executed?

A No.

Q Both of these exhibits that I have just shown you were allegedly in connection with agree-

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rule whereby a special agent or any other agent can go out and get some affidavits and then present them in evidence.

Does Counsel?

Counsel
MR. BERNER: No more than an

attorney can get documents from his clients and put them in evidence other than he had seen them.

THE COURT: The court has not received any documents constituting proof of the facts stated therein other than being what it purports to be. That is the whole point that the Court has made.

MR. GOLDSTEIN: Thank you, your Honor. I just wanted that order.

Respondent rests, your Honor.

THE COURT: I guess we don't have any rebuttals since the respondent put in nothing.

We will designate January 17th for the main briefs, on February 19th for the reply.

The Court will stand recessed until

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Jan. 7 1957

Mr. Robert Rodman Agt.
40 W. 57th St.
New York City, N.Y.

Dear Sir:

This letter will acknowledge receipt
this day from Mr. Robert Rodman of
200,000 shares of Torbrook Iron Ore
Mines Ltd. common shares. These shares
represent full and final payment of
note made from Robert Rodman to the
undersigned in the amount of \$900,000.00,
and dated the 3rd day of November, 1956.

Very truly yours,

/s/
AURELE BRISSON

Montreal, Quebec
Jan. 7 1957

[Exhibit 34]